

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10111 of 2003

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RANABHAI PREMJBHAI MANGUKIYA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
MR MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 26/08/2003

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the
Constitution of India, petitioner detenu has challenged
the order passed by the Police Commissioner, Surat City,

under the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "Act") in exercise of powers conferred upon him under Section 3(1) of the Act. The order is dated 15.11.2002, which was served upon the detenu petitioner on 18.11.2002 and since then the petitioner is under such detention. The petitioner is classified as "dangerous person" and it is alleged that the petitioner is head strong, anti-social and his activities are directly causing or likely to cause harm, danger and alarm of insecurity amongst the people at large and there is also a grave and widespread danger to public life and property.

2. Learned Advocate for the petitioner Ms. Banna Dutta and learned AGP Ms.Mita Panchal for the respondents were heard at length. The order impugned for detention came to be challenged by the petitioner on various grounds. When going through the record, it appears that the petition can be disposed of dealing with one ground agitated by the petitioner and the other grounds raised do not require to be dealt with.

3. In the grounds of detention it is mentioned that in all four offences were registered against the present petitioner detenu under Sections 457, 380, 454 of the IPC. In the said crimes, the petitioner came to be arrested and was under judicial custody till the order impugned came to be passed. In addition to this, the authority which passed the order satisfied itself, according to grounds served upon the petitioner, as to anti-social activities of the petitioner through the statements of two witnesses narrating the incident of 23.6.2002 and 10.3.2002, whereby the petitioner by his activity disrupted the public order. The identity of those witnesses were not disclosed as per Sec. 9(2) of the Act.

4. The main ground which is required to be dealt with is whether the detaining authority applied its mind to the important and vital aspects and facts of the case properly. Undoubtedly, from the grounds served upon the detenu petitioner, it is clear that the detenu petitioner was under custody for all four offences registered against him as aforesaid. The detaining authority further reached to the subjective satisfaction that in the above said crimes, the petitioner was likely to be released on bail at any time and was likely to continue his illegal activities.

5. As laid down by the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT, reported in AIR 2000 SC

3675, there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. On going through the papers placed on record, especially the grounds served upon the detenu, it clearly transpires that there was no cogent material before the detaining authority to reach to the conclusion that the detenu was likely to be released on bail and, therefore, this amounts to improper application of mind by the detaining authority. True it is that, a person can be detained under the Act while he might be in custody, but then, authority concerned must apply its mind as to the subsequent aspect, which is the vital and important aspect, whether the detenu was likely to come out of the custody and was likely to continue his anti-social activity.

6. In the above view of the matter, the order of detention impugned in the petition cannot be sustained on the aforesaid ground alone. The order impugned in this petition is accordingly quashed and set aside. The respondents authorities are directed to release the petitioner Shri Ranabhai Premjibhai Mangukiya forthwith if he is not required to be detained in jail for any other purpose. This Special Civil Application is allowed. Rule made absolute with no order as to costs.

(J.R. Vora, J.)

p.n.nair